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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/463,536	08/18/2000	Jean Morelle	DEM-1	6455

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT PAPER NUMBER

1616

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/463,536	MORELLE ET AL.	
	Examiner	Art Unit	
	Alton N. Pryor	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 18 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 15-17, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 15, 17 and 20 is/are allowed.
- 6) ☐ Claim(s) 16 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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I. Rejection of claim 16 under 35 USC 102(b) as being anticipated by DeMil will be maintained for reason on record and reason as follows.

Applicant argues:

a) Examiner's position is that there is no distinction between treating the flowering phase of the plant as in DeMil versus treating the fruit of the plant as in instant invention; and

b) One skilled in the art clearly understands and recognizes the difference between the flowering stage and fruit stage of the plant and that chemicals have different effects, depending upon the phenological stage in which the chemical is applied to the plant. Applicant employs article entitled "Gibberellin and Flame Seedless Grapes" to support this.

Examiner argues:

a) Instant claims are to treating grape crop, which encompasses the plant as a whole. One of skill in the art would read the claim as to the treatment of the grape plant itself in the flowering and / or the fruit stage. For this reason, DeMil's method to treating the flowering stage of the grape crop reads on instant invention, and there is no reason for DeMil to distinguish between treating the flowering plant versus treating the fruit of plant. Nowhere in applicants' claims does it state that harvested grape crop (fruit) is treated or that the fruit of the grape crop is treated. The instant claim merely states grape crops are treated which encompasses the grape plant with or without fruit. In addition it is inherent that DeMil's method of treating grape crop (plant) with copper salt of caprylic amino acids would increase the sugar content of the grapes since the active step of both the prior art and instant invention is the same; and

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b) "Gibberellin and Flame Seedless Grapes" points out that different chemicals have different effects on plant maturity depending upon the phenological stage (flowering stage versus fruit stage) in which chemicals are applied. However, Examiner does not see where this argument is applicable to instant claims. Instant claims are to treating grape crop, which encompasses the plant as a whole. One skilled in the art would read the claim as to the treatment of the grape plant itself in the flowering and / or the fruit bearing stage. For this reason, DeMil's method to treating the flowering stage of the grape crop reads on instant invention, and there is no reason for DeMil to distinguish between treating the flowering plant versus treating the fruit of the plant. Nowhere in applicants' claims does it state that harvested grape crop (fruit) is treated or that the fruit of the grape crop is treated. The instant claim merely states grape crops are treated which encompasses the grape plant with or without fruit.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morelle et al (GB 2097256; 11/3/092). Morelle teaches an agricultural composition comprising zinc butyrylproline bentonite. Morelle teaches that the composition is applied to seeds or roots. Morelle does not specifically say that the composition is being applied to crops. See page 5 agricultural field composition (1) in section C. Also note in this section Morelle teaches foliage application of a composition. The specified agricultural application (2) does not teach a zinc butyric amino acid

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salt being applied to the foliage. See page 5 agricultural field composition (2) in section C.

However, a reference is not required to disclose every possible scenario for an invention in examples. It would have been obvious to employ a zinc butyric amino acid salt and apply it to the foliage since the invention is generally to agricultural application of zinc and copper butyric amino acids to foliage. Note, agricultural application is broad and encompasses application of the composition to crop. It would have been obvious to one having ordinary skill in the art to apply zinc butyrylproline(amino acid) bentonite to crop since an agricultural application would encompass said application. It is also obvious that the application of zinc butyrylproline bentonite to crop would protect the crop from animals. This is obvious since the active step of both the prior art and instant invention is the same with the exception of the amount of zinc butyrylproline bentonite being applied. It would have been obvious to one having ordinary skill in the art to determine the optimum amount of zinc butyrylproline bentonite to apply to the crop. One would have been motivated to do this in order to enhance the product yield of the crop.

II. Claims 15,17,20 are allowable. The prior art does not teach or suggest instant method of treating beet crop with copper salts of caprylic amino acid, or potato crop at the end of tuberisation with copper salts of butyric-amino acids.

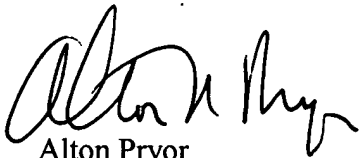
Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alton H. Pryor', is written above the printed name.

Alton Pryor
Primary Examiner
AU 1616